

Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP) Civil Action No.
PROTECTION, LLC)
Plaintiff) 1:15-cv-274
vs.)
WILLOWOOD, LLC,)
WILLOWOOD USA, LLC,)
WILLOWOOD AZOXYSTROBIN, LLC)
and WILLOWOOD LIMITED)
Defendants)

** ATTORNEYS' EYES ONLY **

Videotaped Deposition of Brian Heinze
Washington, D.C.
August 4, 2016
9:30 a.m.

Reported by: Bonnie L. Russo
Job No. 2346611

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BY MR. SANTHANAM:

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Q. Mr. Heinze, if you could turn back to the same document we were on, Exhibit 42. I would like you to turn to Page 26466.

6

Let me know when you get there.

7

A. Okay.

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Q. This slide was a description -- Willowood's description to Lariat of its new product registration process; is that right?

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A. That's correct.

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Q. And it goes through how -- what Willowood's process is from registering a generic product to bringing it to market; is that right?

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A. That is correct.

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Q. In describing Willowood's process, Willowood states at the bottom that: "Its process is unique and the fastest in the industry."

21

Do you see that?

22

A. I do.

1 Q. Willowood was telling Lariat that it
2 has a new product registration process that is
3 unique and the fastest in the industry,
4 correct?

5 A. That is correct.

6 Q. Do you believe that to be the case?

7 A. One of the fastest.

8 Q. And at the bottom, it also --
9 Willowood was telling -- strike that.

10 Willowood was telling Lariat that
11 competitors of Willowood, in registering and
12 bringing a product to market, take
13 significantly longer, correct?

14 A. Correct.

15 Q. Do you agree with that assessment?

16 A. In some instances, yes.

17 Q. But this is what Willowood was
18 telling Lariat as of September 2015?

19 A. And all other private equity
20 companies that saw the management presentation.

21 Q. Now, in Willowood's processes as
22 it's laid out here on 26466, the process begins

1 by first making an offer to pay to the original
2 patent holder; is that right?

3 MR. NEUMAN: Objection. Foundation.

4 THE WITNESS: That is correct.

5 BY MR. SANTHANAM:

6 Q. And then Willowood submits an
7 application to register its product with the
8 EPA, correct?

9 A. That is correct.

10 Q. Part of that process, Willowood
11 contemplates that -- it's Willowood's
12 responsibility to show that its AI is
13 substantially similar as the patent holders.

14 Do you see that?

15 A. I do.

16 Q. And following the EPA application,
17 Willowood contemplates that it will get a
18 federal registration and state registrations.

19 Do you see that?

20 A. I do.

21 Q. After obtaining federal and state
22 registrations, Willowood's process involves

1 notifying the government that it has its own
2 source of the active ingredient; is that right?

3 A. That is correct.

4 Q. The whole process outlined here on
5 26466 takes about 12 months according to
6 Willowood?

7 A. From date of submission, that is
8 correct.

9 Q. And according to Willowood,
10 competitors take significantly longer than 12
11 months; is that right?

12 A. That's correct.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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BY MR. SANTHANAM:

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Q. Handing you a document I am marking
as Plaintiff's Exhibit 43.

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MR. SANTHANAM: For the record,
Plaintiff's Exhibit 43 is consecutively
Bates-labeled WW 14576 -- strike that. It is
not consecutively Bates-labeled.

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It is a compilation of e-mails from
Matt Heinze on or about January 22, 2015.

22

BY MR. SANTHANAM:

1 Q. Mr. Heinze, what I've handed you, as
2 I mentioned, is a compilation of e-mails.

3 Would you flip through and confirm
4 that the e-mails were all sent by Matt Heinze
5 of Willowood USA on or about January 22,
6 notifying customers about a price change on
7 Azoxy 2SC?

8 A. What is your question?

9 Q. Yes. The e-mails in Exhibit 43 were
10 all sent by Matt Heinze of Willowood USA on or
11 about January 22, 2015 notifying a range of
12 customers about a price change on Azoxy 2SC?

13 A. That's correct.

14 Q. This would be an example of an
15 instance in which a price change was
16 communicated internally within Willowood to the
17 sales organization and then communicated out to
18 the respective customers, correct?

19 A. Correct.

20 (Deposition Exhibit 44 was marked
21 for identification.)

22 BY MR. SANTHANAM:

1 Q. Handing you a document I am marking
2 as Exhibit 44.

3 MR. SANTHANAM: For the record,
4 Exhibit 44 is a compilation of e-mails from
5 Matt Heinze dated on or about July 8, 2015, all
6 of which are noted in the subject line:
7 "Willowood AzoxyProp Xtra."

8 BY MR. SANTHANAM:

9 Q. Mr. Heinze, if you could flip
10 through Exhibit 44 and confirm that it is a
11 compilation of e-mails from Matt Heinze dated
12 on or about July 8, 2015 in which he
13 communicated to his customer base, a reduction
14 in the price of AzoxyProp Xtra to \$80 per
15 gallon.

16 A. That is correct.

17 MR. NEUMAN: Objection. Foundation.

18 BY MR. SANTHANAM:

19 Q. This would be another instance in
20 which -- strike that.

21 Exhibit 44 is another instance in
22 which a reduction in price or a price change is

1 communicated internally to the sales
2 organization and then the sales organization
3 communicated that price change to their
4 respective customer bases, correct?

5 A. Correct.

6 Q. And Exhibit 43, the previous
7 exhibit -- let me know when you get there.

8 A. Uh-huh.

9 Q. In addition to communicating a price
10 change to his customer base, Mr. Heinze also
11 indicated that Willowood had obtained a
12 California registration for AzoxyProp Xtra.

13 Do you see that?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. That is yes.

17 Q. In particular, Mr. Heinze compared
18 AzoxyProp Xtra in his e-mail to his customers
19 to Syngenta's Quilt Xcel as an alternative,
20 correct?

21 A. Correct.

22 (Deposition Exhibit 45 was marked

1 for identification.)

2 BY MR. SANTHANAM:

3 Q. Handing you a document I am marking
4 as Plaintiff's Exhibit 45.

5 MR. SANTHANAM: For the record,
6 Plaintiff's Exhibit 45 is consecutively
7 Bates-labeled WW 1446 to 1448.

8 BY MR. SANTHANAM:

9 Q. Mr. Heinze, would you take a look at
10 Exhibit 45 and, you know, I will represent to
11 you that this is an e-mail chain that was
12 produced by Willowood in this litigation.

13 My question is: Do you have any
14 reason to believe that this -- the e-mails in
15 this e-mail chain were not actually sent?

16 A. No.

17 Q. Now, on March 22, 2013, Matt Heinze,
18 a representative of Willowood USA, informed
19 customers, potential customers regarding an
20 expected launch of an azoxystrobin product by
21 Willowood in 2014; is that accurate?

22 A. Correct.

1 Q. And in particular, he referenced the
2 azoxystrobin product as being an alternative to
3 Syngenta's Quadris product; isn't that right?

4 A. That's correct.

5 (Deposition Exhibit 46 was marked
6 for identification.)

7 BY MR. SANTHANAM:

8 Q. Handing you a document that I am
9 marking as Plaintiff's Exhibit 46 for
10 identification.

11 MR. SANTHANAM: For the record,
12 Plaintiff's Exhibit 46 is a single-page
13 document that is Bates-labeled WW 1445.

14 BY MR. SANTHANAM:

15 Q. Mr. Heinze, again, you have no
16 reason to doubt that the e-mail in Exhibit 46
17 was not sent?

18 A. No, I do not.

19 Q. On April 15, 2013, Matt Heinze, a
20 representative of Willowood USA, informed
21 customers regarding Willowood's expected launch
22 of an azoxystrobin product in 2014; is that

1 right?

2 A. That's correct.

3 Q. In particular, he compared the
4 expected azoxystrobin launch to Syngenta's
5 Quadris and Abound products, correct?

6 A. That is correct.

7 (Deposition Exhibit 47 was marked
8 for identification.)

9 BY MR. SANTHANAM:

10 Q. Handing you what I am marking as
11 Exhibit 47.

12 MR. SANTHANAM: For the record,
13 Exhibit 47 is a single-page document,
14 Bates-labeled WW 14384.

15 BY MR. SANTHANAM:

16 Q. Mr. Heinze, you have no reason to
17 doubt that the e-mail in Exhibit 47 was sent?

18 A. No, I do not.

19 Q. You have no reason to doubt it?

20 A. Correct.

21 Q. On April 25, 2014, Matt Heinze, a
22 representative of Willowood USA, requested a

1 meeting with a potential customer to discuss,
2 among other things, azoxystrobin volumes,
3 correct?

4 A. Correct.

5 Q. This particular customer was Dean
6 Miller at Big Valley Ag; is that right?

7 A. That's correct.

8 (Deposition Exhibit 48 was marked
9 for identification.)

10 BY MR. SANTHANAM:

11 Q. I am handing you a document I am
12 marking as Plaintiff's Exhibit 48.

13 MR. SANTHANAM: For the record,
14 Plaintiff's Exhibit 48 is a single-page
15 document Bates-labeled WW 12693.

16 BY MR. SANTHANAM:

17 Q. Mr. Heinze, you have no reason to
18 doubt that the e-mails in Exhibit 48 were sent,
19 correct?

20 A. Correct.

21 Q. As of June 16, 2014, IAP was given
22 the impression by Matt Heinze that Willowood

A. It states around \$150 a gallon, yes, that is correct.

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Q. As of October 17, 2014, Willowood had offered Reichman Sales and Service 17,280 gallons of Azoxy 2SC at a unit price of \$125; is that right?

A. That's right.

Q. And as of October 17, 2014, Willowood had offered Reichman Sales and Services 21,600 gallons of AzoxyProp Xtra at a unit price of \$90 per gallon; is that right?

A. That's right.

Q. Do you recall this order being placed?

A. I do.

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BY MR. SANTHANAM:

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Q. Handing you a document I'm marking
as Plaintiff's Exhibit 52.

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MR. SANTHANAM: For the record,
Plaintiff's Exhibit 52 is a two-page document
and it is consecutively Bates-labeled WW 100721
[sic] to 100722 [sic].

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BY MR. SANTHANAM:

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Q. The first page of Exhibit 52 is an
e-mail from you to Joe Middione, Casey Daniel
and Matt Heinze with the subject line:
"Azoxystrobin pricing."

15

Do you see that?

16

A. I do.

17

Q. As of March 5, 2015, your view was
that Willowood had been pricing Azoxy 2SC at
\$125 per gallon all season; is that right?

20

A. That is correct.

21

Q. And what does the term "season" mean
in this context?

22

1 A. It would -- I think everybody would
2 have their own definition of a season, but I
3 view most agricultural seasons from October 1
4 through September 30, and that is because most
5 of the basic manufacturers roll out their
6 subsequent year's program in the fourth
7 quarter.

8 So -- and again, I refer back to the
9 Reichman document. They were at \$125 a gallon
10 for Azoxy 2SC in that document back in October.

11 Q. Willowood was pricing Azoxy 2SC at
12 \$125 per gallon for the season going back to
13 October 2014; is that right?

14 A. That's correct. That's why I said
15 October 1 was my estimation of the start of the
16 season.

17 Q. On that last document, if you go to
18 the last page, there is an e-mail from Pat
19 Menagh.

20 A. Menagh.

21 Q. Menagh. Dated March 5, 2015, and he
22 states: "I am picking up that you have \$125

1 per gallon price on azoxystrobin."

2 What he is referring to there
3 reflects the price that Willowood's Azoxy 2SC
4 had been all season; is that right?

5 A. Correct.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 BY MR. SANTHANAM:

2 Q. Handing you a document I am marking
3 as Plaintiff's Exhibit 54.

4 MR. SANTHANAM: For the record,
5 Plaintiff's Exhibit 54 is consecutive -- an
6 e-mail chain consecutively Bates-labeled WW
7 10305 through 10309.

8 BY MR. SANTHANAM:

9 Q. Mr. Heinze, if you could take a
10 minute to look through this. I'm going to ask
11 questions about most of the e-mails in this
12 document, so it might -- I will give you an
13 opportunity to familiarize yourself with the
14 document.

15 A. Okay.

16 Q. If you could turn to Page 1308.

17 There is an e-mail there from Joe
18 Middione to Andy King, Tom Kempf, Casey Daniel,
19 Matt Heinze copying you dated July 8, 2015.

20 Do you see that?

21 A. Yes, I do.

22 Q. In his e-mail, Mr. Middione states:

1 "Brian has decide that the new price for
2 AzoxyProp Xtra is \$80 per gallon. Please
3 communicate this to your respective accounts."

4 Do you see that?

5 A. I do.

6 Q. As of July 8, 2015, Willowood
7 dropped its price on AzoxyProp Xtra to \$80 per
8 gallon; is that right?

9 A. It doesn't say it was AzoxyProp
10 Xtra. It says AzoxyProp but that is correct.

11 Q. And this would be another instance
12 in which it was the practice within Willowood
13 to communicate a price change to its customers,
14 correct?

15 A. This was communicated to --
16 internally.

17 Q. And the instruction given internally
18 was to communicate the price drop to \$80 per
19 gallon to the respective customers, correct?

20 A. That is correct.

21 Q. If you look at Page WW 100307, it's
22 the page before?

1 A. Yes.

2 Q. At the bottom, it is -- well, that
3 e-mail is an e-mail from you responding to Joe
4 Middione, Andy King, Tom Kempf, Casey Daniel
5 and Matt Heinze, your sales team, also dated
6 July 8, 2015; is that right?

7 A. That is correct.

8 Q. At the bottom of the e-mail, you
9 state: "This price reduction will be
10 retroactive to July 1 and will not impact
11 products sold before that date," correct?

12 A. That is correct.

13 Q. The price drop in AzoxyProp Xtra to
14 \$80 per gallon on July 8, 2015 was retroactive
15 to July 1, 2015; is that right?

16 A. That is correct.

17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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BY MR. SANTHANAM:

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Q. The last sentence on that first

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e-mail on Exhibit 55 -- or the last paragraph:

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"So you would rather" leave me -- strike that.

13

So you would let: "So you would

14

rather me leave your name off the e-mail and

15

then field all of the calls from customers

16

asking why we did it. I don't have the answer.

17

If you do so, I thought, I would have save a

18

step."

19

Do you see that?

20

A. I do. What is your point?

21

Q. Why would Mr. Middione have to field

22

calls from customers due to a drop in the price

1 of AzoxyProp Xtra at \$80 per gallon?

2 A. Because he heads up our sales
3 organization.

4 Q. Why would customers, you know, be
5 disappointed in a price drop of AzoxyProp Xtra?

6 MR. NEUMAN: Objection. Form.
7 Foundation.

8 THE WITNESS: I don't believe they
9 were.

10 BY MR. SANTHANAM:

11 Q. But Mr. Middione is indicating a
12 certain level of angst in trying to have to
13 field questions, calls from customers, right?

14 A. That's Mr. Middione's opinion.

15 Q. Right. And why -- why would
16 customers not like the price of AzoxyProp Xtra
17 dropping to \$80?

18 MR. NEUMAN: Same objection.

19 THE WITNESS: I don't know think
20 they would have any objection.

21 BY MR. SANTHANAM:

22 Q. It's your opinion that the customers

1 would not mind having the AzoxyProp Xtra price
2 come down to \$80 per gallon?

3 A. Not at all. If it was a legitimate,
4 competitive price change, absolutely not. That
5 is why that change was made.

6 Q. At least two members of your sales
7 organization believed it was not a legitimate,
8 competitive decision, correct?

9 A. That's what this e-mail string
10 indicates, yes.

11 (Deposition Exhibit 56 was marked
12 for identification.)

13 BY MR. SANTHANAM:

14 Q. Handing you a document marked as
15 Plaintiff's Exhibit 56.

16 MR. SANTHANAM: For the record,
17 Exhibit 56 is consecutively Bates-labeled WW
18 11148 to 11151.

19 BY MR. SANTHANAM:

20 Q. Mr. Heinze, if you could take a look
21 through Exhibit 56 as well, and let me know
22 once you have had a chance to look through it.

1 A. Okay.

2 Q. If you turn to the second last page,
3 WW 11150, there is an e-mail there from Joe
4 Middione, the chief operating officer to you
5 dated July 16, 2015.

6 Do you see that?

7 A. Yes, I do.

8 Q. To put it mildly, Mr. Middione
9 expresses even more disagreement with the drop
10 in price to \$80 per gallon of AzoxyProp Xtra,
11 correct?

12 MR. NEUMAN: Objection. Form.

13 THE WITNESS: He is expressing his
14 disappoint -- his opinion in his e-mail, yes.

15 BY MR. SANTHANAM:

16 Q. In particular, he was expressing his
17 disagreement that the price of AzoxyProp Xtra
18 should have been dropped to \$80 in the first
19 place, correct?

20 A. That's what he is saying.

21 [REDACTED]
[REDACTED]

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Q. So Innvictis was being offered a price on AzoxyProp Xtra as of July 16, 2015 at a rate of \$76 per gallon; is that right?

MR. NEUMAN: Objection.

THE WITNESS: That's not what that is saying. Innvictus's price was higher and the \$10 rebate would net them to \$76.

BY MR. SANTHANAM:

Q. Okay. So the net price that Innvictis was being offered for the sales of AzoxyProp Xtra as of July 16, 2015 was \$76 per gallon, correct?

A. That was net.

Q. \$76 was the net price, correct?

A. After the \$10 rebate, yes.

Q. In the next e-mail from July 17, 2015, you respond -- an e-mail from you, correct?

A. At the bottom?

1 Q. Yes.

2 A. Yes.

3 Q. And in particular, you ask: "Why is
4 this at \$76 per gallon. Who authorized this?"

5 Do you see that?

6 A. Yes, I do.

7 Q. You were not aware that Innvictis
8 had been offered a net price of \$76 per gallon
9 in July -- mid-July 2015, correct?

10 A. That's correct.

11 Q. In fact, that net price is \$76 per
12 gallon of AzoxyProp Xtra to Innvictis was
13 offered by Casey Daniel; is that right?

14 A. Where are you seeing that?

15 Q. If you go to the e-mail right above,
16 it's an e-mail from Casey Daniel to you and Joe
17 Middione copying Andy King dated July 17, 2015.

18 And the middle of the e-mail reads:

19 "When the news broke that we were at \$80 to
20 Titan Pro and others, Casey and Mike were
21 pissed. I said let me work with you and make
22 this right. After we talked about it, we

Do you see that?

Q. You don't have any reason to doubt Mr. King's statement that Innvictis was at \$100 dollars on Azoxy and \$75 on AzoxyProp Xtra?

Q. Innvictis as of January 7, 2016 was being offered Azoxy 2SC at \$100 per gallon; is that right?